IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN.APPLN. NO. 413 OF 2004

Anil Raghunath Salvi ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. M.S. Kadu, for the Applicant.

Mr. B.H. Mehta, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

14th February 2005

P.C.:

. Heard Counsel for the parties. Rule. Mr. Mehta waives notice for the Respondent. Rule made returnable forthwith by consent. As short question is involved, application is taken up for final disposal forthwith by consent.

2. The accused in R.C.S.No. 443/1989, who is the Applicant herein, was tried for offence

under sections 406, 420 of the Indian Penal Code. The trial Court, at the conclusion of the trial, recorded finding of guilt against the Applicant on both the counts and disposed of the case by passing following operative order.

> "The accused is hereby convicted of the offence punishable u/s. 420 and 460 (sic, 406) of the Indian Penal Code.
>
> The accused is hereby sentenced to undergo S.I. till rising of the court and to pay a fine of Rs.5,000/- i/d to undergo further S.I. for one year.
>
> Rs.3,500/- out of the fine amount if deposited by the accused be released to the complainant towards compensation, in the light of provision under section 357 of Cr.P.C. after the period of appeal is over.
>
> The accused is directed to surrender his bail bond."

3. Against the abovesaid decision, the Applicant carried the matter in appeal, which has been heard and disposed of by First Ad hoc Additional Sessions Judge, Kalyan. By the impugned decision dated 26th August 2004, the appeal has been allowed and matter remanded to the file of the trial Court for recording separate conviction and sentence in respect of offence under section 406 and 420, respectively.

4. In substance, the Appellate Court has opined that the lower Court ought to have passed separate order of conviction as well as sentence against the Applicant on each count; and as that has not been done, the matter deserves to be remanded to the lower Court for that purpose without examining the merits of the case. Indeed, the former view is correct, but the question is : Whether that by itself can be a ground to remand the case to the trial Court, without examining the merits of the case at all ?

5. The Applicant, relying on the decision of the Apex Court reported in A.I.R. 1960 S.C. 748 in the case of Rabari Ghela Jadav v. State of Bombay, contends that the appellate Court has in effect considered the appeal on the point of sentence only, which was impermissible; whereas the appellate Court had enough power to deal with all aspects of the case in the appeal and it was inappropriate to remand the case to the trial Court. Learned Counsel for the Applicant has also rightly placed reliance on the decision in the case of Md. Bashir Ahmed v. The State,

reported in A.I.R. 1961 Patna 252 to contend that the appellate Court cannot remand the case to the trial Court only for passing proper sentence.

6. Learned A.P.P., on the other hand, contends that, perhaps, the appellate Court was of the view that the sentence imposed by the trial Court in respect of offence for which the Applicant was tried was insufficient, in that, to undergo simple imprisonment till rising of the Court only and pay a fine of Rs.5,000/-, in default to undergo further S.I. for one year.

7. Even accepting the stand taken by the learned A.P.P. being the reason for remand of the case to the trial Court, I see no justification for remand of the case on that count, inasmuch as there are ample powers with the Sessions Court under the Cr.P.C., which enables the Sessions Court to deal with such a situation while hearing the appeal preferred by the accused against the order of conviction and sentence. If the fact situation of the case so warrants, the Sessions Court can and ought to

issue notice to the accused to show cause as to why the sentence should not be enhanced; and those proceedings (Show Cause Notice) will have to be considered along with the appeal of the accused on its own merits in accordance with law. In other words, merely because the appellate Court is of the view that there was some irregularity in the order of the trial Court in recording conviction in relation to the different counts for which the accused was tried as in the present case, or, that the sentence imposed by the trial Court was insufficient, that by itself can be no ground to remand the case, for the Sessions Court itself could have cured such error in exercise of Appellate and Revisional powers under the Code. So understood, by any standards, the impugned order cannot stand the test of judicial scrutiny.

8. Accordingly, this revision ought to succeed and the appeal being Criminal Appeal No. 14/1996 is ordered to be restored to the file of the Sessions Court at Kalyan, District Thane, for being dealt with in accordance with law.

9. It is once again made clear that it will be open to the Sessions Court to issue notice to the Applicant to show cause why sentence should not be enhanced in the fact situation of the present case, if so advised.

10. Petition disposed of on the above terms. The appellate Court to decide the appeal as expeditiously as possible, preferably within six months from the receipt of writ of this Court.

11. Copy of this order be forwarded to the Registrar-General for placing it before the appropriate authority forthwith in the light of observations made regarding the approach of the concerned Judge in the impugned judgment.

(A.M.KHANWILKAR,J.)